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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

1616 REMINC LIMITED PARTNERSHIP,
Petitioner,

v.

UNITED STATES ELEVATOR CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI

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SUPPLEMENTAL STATEMENT OF THE CASE

Petitioner's statement of the case is considerably truncated and needs elaboration. 1616 Reminc Limited Partnership did indeed file a Chapter XII proceeding under the Bankruptcy Act on August 15, 1975. It continues to remain debtor-in-possession and has operated the Xerox Building in the Rosslyn section of Arlington County, Virginia with considerable success.

Petitioner's brief says: "In accordance with a Plan of Arrangement, Reminc wound up its contractual relationship with Citcon [the general contractor]." (Petitioner's Brief, P. 3). There is nothing in the record to suggest that it had some special arrangement with Citcon or that there were some special terms in the plan of arrangement whereby Citcon was to be treated any differently than any other creditor.

In fact, Citcon was the general contractor whose "umbrella lien" under Virginia law would protect all subcontractors,

including the Respondent, United States Elevator Corporation. (Va. Code 43-4). Citcon's proof of claim and acceptance of Petitioner's plan of arrangement indicated that $1,199,292.03 was due it.[1]

As seen from Reminc's statement of the case, *after* it secured acceptances and confirmation of its Plan of Arrangement, Reminc took an assignment dated almost a year after it instituted these Chapter proceedings. That assignment from Citcon to Petitioner, although worth almost $1,200,000.00, was purchased for approximately $15,000.00 by Petitioner. The assignment and the "buy-out" of the general contractor were post filing occurrences.

Prior to the assignment, in January of 1976, Petitioner filed forty-one "Objections to Claim" against entities who had performed work on its building of whom U.S. Elevator was one. (J.A. 18-20). That Objection to Claim said in part:

> "3 . . According to your debtor's books and records of account, the balance owed to this contractor under its original contract is $109,938.00. . . .
>
> 5. That if all work required under [U.S. Elevator's] original contract is completed in accordance with the terms and specifications of that contract, then your debtor has *no objection* to the above named contractor being paid the amount owed under its original contract." (J.A. 86; emphasis supplied).

Counsel to United States Elevator was unaware that the debtor had in its possession a waiver of mechanic's lien signed by Respondent. (Though not before this Court, it should suffice to say that while U.S. Elevator could not sustain the burden of fraud, it was certainly duped into releasing its mechanic's liens rights in return for what was promised as prompt payment.)

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[1] All Joint Appendix references are to that appendix used in the United States Court of Appeals for the Fourth Circuit. This specific exhibit is J.A. 139 and 140.

Petitioner's brief says that there was "severely conflicting testimony" on whether the elevators were installed in accordance with contract provisions. It fails to mention that two expert witnesses hired by Reminc testified in favor of U.S. Elevator Corporation. While the facts may have been severely disputed before the trial, at the actual hearing, even Petitioner's witnesses essentially agreed that the elevators were operating properly or admitted writing reports to that effect.

Emphasized in Petitioner's brief is the fact that a Xerox employee testified as to the asserted deficiencies in the elevators' operations. It is notable that Xerox Corporation is the prime tenant of the debtor's building and, as the docket entries reflect, was involved in substantial and long-standing disputes with the debtor. Xerox withheld rent for a considerable period of time. Its employee would hardly be expected to come into Court and say the elevators were working properly when Xerox was alleging construction defects (among which was the elevator system) and withholding rent because of such asserted, multiple defects.

Petitioner really produced no evidence that the elevators were unsatisfactory from anyone other than a Xerox employee and an elevator mechanic employed by a competitor of U.S. Elevator. As the trial Judge's 23-page opinion sets forth, there were two "experts" for the debtor. "[Charles] Calderone indicated [in a letter dated August 26, 1976] that Richard Langelotti, another employee of Syska & Hennessy, had visited the Xerox building in October of 1975 and found the elevator system to be 'in generally good condition' [and] Langelotti's testimony corroborated this testimony." (Trial Court's opinion, App. 28a).

Just before trial, Petitioner decided to take the *de bene esse* deposition of one William Cork who was a former employee of United States Elevator Corporation. Petitioner now suggests that Cork's testimony was "anchoring" its case.

Its direct examination of Cork took less than 55 pages. In some areas, counsel to Petitioner chose to go over the memo's language verbatim. Cork was not even able to identify the memo saying: "This appears to be the copy of my rough draft

but I have no way of knowing if it is." (J.A. 431). Counsel started on the first page of the memorandum saying: "On the first page, first of all, can you explain what you mean in paragraph 2. . . ." (J.A. 437). At the end of the direct examination, he alluded to a quote that was a few sentences from the end of the seven-page memorandum (J.A. 465).

Against this factual backdrop, U.S. Elevator introduced favorable testimony from three elevator experts and another expert's conclusions were received in evidence by way of a written report.[2] That report dated November 10, 1975, indicates that Xerox-the prime tenant-informed him that the shutdowns in the elevator had been reduced and the service had improved. "In conclusion, in my opinion, the elevators are now acceptable with minor exceptions to the basement service and selective doors." (J.A. 185). In addition, Petitioner signed written acceptances of all eight elevators (J.A. 180-1).

The trial judge wrote a 23-page opinion. (App. 7a *et seq.*) Petitioner then noted the same kind of appeal that it had noted on other issues throughout these lengthy proceedings and asked the District Court to review the decision.

The District Court did so and affirmed. *After* the affirmance by the District Court, *long after* it had secured acceptances and approval of its plan of arrangement, this Petitioner then, for the first time before the United States Court of Appeals for the Fourth Circuit, asserted error in that there had not been a *de novo* review. In effect, it belatedly asked for a repetition of the two-day trial held before the Bankruptcy Court.

Other meritless arguments are advanced by Petitioner also and will be dealt with hereafter in the brief.[3]

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[2] The extensive qualifications of Elevator's lead expert cover 29 pages. (J.A. 189-203).

[3] It is counsel's distinct recollection that the asserted request for a *de novo* review and United States Elevator's treatment as unsecured creditor were not even mentioned at oral argument before the Fourth Circuit.

I.

THE REQUEST FOR A *DE NOVO* REVIEW COMES TOO LATE AND IS NOT IN CONFLICT WITH THIS COURT'S DECISION IN *NORTHERN PIPELINE CONSTRUCTION CO.* V. *MARATHON PIPE LINE CO.*

Petitioner has passed its seventh anniversary as a viable Chapter proceeding and has sought many reviews of the United States Bankruptcy Courts' decisions in the United States District Court for the Eastern District of Virginia. It now suggests that the Honorable Albert V. Bryan, Jr. should have a conducted a *de novo* hearing when no such request was made to him.

While it is true that much weight should be given to a referee's finding of facts based upon conflicting evidence, "... the findings of the referee were held not necessary *conclusive* on the reviewing judge." *2A Collier on Bankruptcy,* (14th Edition) §39.28, p. 1536 (Emphasis in original; citations omitted). As Collier's goes on to point out: "... even though a referee's findings 'should stand unless the judge is fully satisfied that error has been committed,' nevertheless they are reviewable though the review involves discrediting witnesses." *2A Collier, supra, Ibid.* (Footnotes omitted.)

The Fourth Circuit followed it earlier ruling in *Gilmer* v. *Woodson,* 332 F. 2d 541, 546 (4th Cir. 1964): "Where the referee's findings are based upon conflicting evidence, as here, the reviewing court should not disturb such findings unless they are not supported by any substantial evidence or there is most cogent evidence of mistake and micarriage of justice." The cases to that effect are legion. See, e.g., *In Re Schaefer Co.,* 103 F. 2d 237 (6th Cir.1939) *cert. den.* 308 U.S. 579, *Potucek* v. *Cordeleria Lourdes,* 310 F.2d 527 (10th Cir. 1962) *cert. den.* 372 U.S. 930. *Allen* v. *Lokey,* 307 F. 2d 353 (5th Cir. 1962). (There are also more than 40 cases on point cited in 2A Collier's *supra* fn 22, pp. 1536-1537.)

The belated request of Petitioner for a *de novo* review does more than assault Rule 810. It also asks this Court to in effect rewrite the provisions of § 2a(10), § 39a(8) and § 39c of the Bankruptcy Act.

Reminc pursued its appeal to the District Court pursuant to Rule 810 and availed itself of all of the rights accorded it under the 800 series rules. At this late date, it is suggested that Judge Bryan should have *sua sponte* ordered a *de novo* hearing for which no request was ever made.

In the Fourth Circuit, Petitioner assigned as one of its errors: "Reminc was entitled to *de novo* review by an Article III Judge." Before this Court, Petitioner now seems to say that the Bankruptcy Act and the appeal procedures followed by it are unconstitutional. It then suggests that because of Rule 810 it had no other means by which to seek a trial before the United States District Court.

The latter position is incorrect. Rule 102(b) says: "The District Court may, at any time, for the convenience of the parties or other cause, withdraw a case *in whole or in part from a referee* and either act himself or assign the case. . . ." Of course, this Petitioner never asked for such relief and never asked to have the case heard before the U.S. District Judge.[4] Petitioner surely can't be suggesting that it can have two trials before two triers of fact.

Apparently Petitioner supposes that the requested trial before the District Court would yield a different result. This Petitioner has had one bite at the evidentiary apple and now belatedly seeks a second one.

The method of review utilized in this case and the *Marathon Pipe Line* decision are not incompatible. The *Marathon* decision held that the authority of the new Bankruptcy Judge was improperly circumscribed but implicitly approved the earlier system under the "old" Bankruptcy Act.[5]

---

[4] On March 15, 1976, U.S. Elevator filed an application to lift the stay so it could proceed in State Court or, in the alternative, for reference to a special master (J.A. 24). Apparently the debtor objected as the matter was taken under advisement (J.A. 25, March 19, 1976 docket entry). Had the debtor joined in that request, the case would have been heard in a Virginia State Court of record.

[5] "But this Court has sustained the use of adjunct fact-finders even in the adjudication of constitutional rights—so long as these adjuncts were subjected

(footnote continues)

Reminc sought the rulings and protection of the referee without reservation. It is only after it lost the trial and the first appeal that it has complained. The complaint is meritless and fatally late.

II.

THE EXCLUSION OF THE MEMORANDUM WAS HARMLESS ERROR AS THE LOWER COURTS HAVE FOUND.

The author of the questioned memorandum was one Lawrence W. Cork who was deposed *de bene esse* in California on January 23, 1980, shortly before trial. He testified that his duties were to "service elevators, answer trouble calls and adjust new installations." (J.A. 413). He styled himself an "elevator mechanic" (J.A., *Ibid.*) and his education was through high school (J.A. 418). He had taken no formal courses in elevator operation (J.A. 420). He never signed his draft memo and never reviewed it but said "this appears to be the copy of my rough draft but I have no way of knowing if it is." (J.A. 431.).

Petitioner's objection seems to be that the memo itself was not introduced into evidence. In view of its technical nature, it would need extensive explanation and standing alone would have little utility. Presumably for that reason, counsel to Petitioner went over in some detail the wording of the memorandum and questioned Mr. Cork in connection with its contents. The deposition was not so lengthy as to preclude counsel from going through it line by line if he felt it advisable. No motion was ever made in the course of the *de bene esse* deposition to move the memo into evidence.

(footnote continued)

to sufficient control by an Art. III district court." *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, _____ U.S. _____, 50 USLW 4892, 4900.

Counsel elected then not to go into it in any more detail but effectively covered the major points in all events. Clearly, the substance of the questioned exhibit was before the trier of fact.

Petitioner's sole reliance on *Gordon* v. *United States*, 344 U.S. 414, 73 S. Ct. 369 (1952) is misplaced. That case is totally inappropriate for the issue at hand in this case.

Gordon was a criminal case in which an accomplice named Marshall was granted a plea bargain and testified against Gordon and others. "On cross-examination, Marshall admitted that between his apprehension and his final statement to the Government, which implicated petitioners, he had made three or four [other] statements which did not." 73 S. Ct. 372. Petitioners in *Gordon* moved the trial Judge to order the Government to produce those earlier statements which request was denied. In addition, the petitioner was not allowed to impeach Marshall on the issue of promises supposedly made to him by a District Court Judge if he cooperated. Hence, not only was petitioner denied access to the statements, but he was also denied the right to utilize them at trial.

Here Petitioner not only had the memorandum in its possession but also had an unfettered right to elicit testimony regarding its contents. If its entire contents were not before the trier of fact, it is either because counsel failed to adequately explore the memo at deposition or that it is only *after* the trial that Petitioner felt the memo was crucial.

The overwhelming weight of all the testimony mandated a decision in United States Elevator's favor. The three lower Courts have so ruled. The refusal to admit into evidence the memorandum itself was harmless error.

III.

THE FACTS OF THIS CASE AND ESTABLISHED PRECEDENT MANDATE LIABILITY BY VIRTUE OF THE ASSIGNMENT.

When an assignee unwittingly blunders into an assignment which could impose liability upon him, he may choose not to

accept the benefits and thereby free himself of liability. Alternatively, he can continue to press the claim of his assignor and take with it the liabilities as well as the benefits.

The usual assignment situation is as follows: assignor owes assignee money but can not pay. Assignor then assigns its rights against a third party to assignee, the latter hoping that its debt will be satisfied by a different obligor. In that simple commercial situation the assignee assumes no duties because it is enforcing an *executed* contract without notice of the third party's claims. Here Reminc knew of the claim, listed United States Elevator as a disputed creditor and filed an objection to Elevator's claim *prior* to the assignment.

The instant situation further distorts the normal assignment arrangement. As assignor, Citcon's proof of claim shows the assignee (Reminc) actually owed money to the assignor (Citcon) instead of the usual, opposite situation. (J.A. 139-140) Reminc paid Citcon, as assignor, and thereby assertedly obtained its $1,500,000.00 counterclaim right for which it had paid $15,000.00. In addition, it says it escapes the liability of Citcon to United States Elevator by so doing, even though it secured acceptance of its plan of arrangement never mentioning what is now asserted to be a complete defense to *all* subcontractors' claims.

If this procedure is allowed—particularly in a court of equity—the courts will be beseiged with cases where contested claims are assigned by an assignor that then goes out of business *as did Citcon* (See J.A. 215-220). The assignee (with perhaps the same principals) but now operating as a new legal entity then pursues the contested claim immune from any exposure to the third party. The assignment has thereby created a situation where its heads assignee wins and tails assignee does not lose. If Petitioner's theory is accepted, the assignment deprives one of the original parties to the contract of all rights to recover affirmatively and allows it only to defend and hope for a verdict in its favor. In these unusual factual circumstances the law places an affirmative obligation upon Reminc as all the lower courts found.

Petitioner seems to rely primarily upon the case of *United States ex rel White* v. *Thompson & Georgeson, Inc.* 346 F2d 865 (9th Cir. 1965). In *White* the District Court's allowance of an affirmative recovery *against* the assignee in favor of the third party was affirmed. This is precisely the relief awarded to United States Elevator by the Courts below. The 9th Circuit said: "White is suing as the assignee of Dunbar [the assignor], and as such stands in Dunbar's shoes." 346 F. 2d at 869. Virginia has adopted the same salutory rule: "An assignee steps into the shoes of the assignor and takes the assignment subject to all *prior equities* between previous parties and his situation is no better than that of the assignor." 2A Michie's Juris., *Assignments* §29. (Emphasis supplied).

Reminc insists it "only" purchased a right. What kind of right is it? A contractual right which is determined from reading the contract of the parties. Succinctly, it is an assignment of rights which have been conferred by contract. Reminc apparently is suggesting it purchased only a naked cause of action. It did so for nothing more than nominal consideration (when compared to the asserted value of the claim) and thus it is either champertous or totally inequitable.

Since equity will consider as done that which ought to be done, equity has the power to assume that Reminc received something more than the power to sue. To do otherwise would be to allow Reminc to benefit from its own inequitable behavior.

Reminc also asserts that United States Elevator Corporation is entitled to prove the balance due it under its contract only for the purpose of taking a deduction against the claims of Reminc. In other words, it is contended that by taking an assignment, Reminc has only affirmative rights against United States Elevator Corporation but no responsibility to complete performance under the contract assigned by making payments.

The case of *Fiberchem, Inc.* v. *General Plastics Corporation*, 495 F. 2d 737 (9th Cir. 1974) is precisely in point here. The plaintiff, Fiberchem, held an exclusive sales agreement with General Plastics "... a now defunct manufacturer." 495 F. 2d at 737. Fiberchem sued Rowland for commissions on sales

by Rowland "... after Rowland had purchased from General certain assets including General's purchase orders." *Id.* at 738. Rowland, as assignee, claimed to have purchased only selected assets and "... expressly refused to become obligated to pay sales commissions to Fiberchem on these orders." *Ibid.* General had since filed for bankruptcy. The Court noted that Fiberchem, the plaintiff, was not a party to the dealings between General and Rowland and held that "... in spite of Rowland's disclaimer, because Rowland knew of the sales-commission agreement, it could not purchase the order file free from its inherent liabilities—the obligation to pay sales commissions." *Ibid.*

In *Rose* v. *Vulcan Materials Company,* 194 S.E. 2d 521 (N.C. 1973), the Supreme Court of North Carolina examined the instant question at length. In giving a ruling which favors United States Elevator Corporation, that Court said: "We therefore adopt the Restatement Rule and expressly hold that the assignee under a general assignment of an executory bilateral contract, in the absence of circumstances showing a contrary intention, becomes the *delegatee of his assignor's duties* and impliedly promises his assignor that he will perform such duties." 194 S.E. 2d at 534 (Emphasis added.) This case also quoted from a Law Review article by Professor Grismore which said: "It is submitted that the acceptance of an assignment in this form does *presumptively import* a tacit promise on the part of the assignee to assume the burdens of the contract, and that this presumption should prevail in the absence of the *clear* showing of a contrary intention...[because] it purports to transfer the contract as a whole, and since the contract is made up of both benefits and burdens, *both* must be intended to be included." *(Ibid.,* emphasis supplied). The North Carolina Court went on to note that the Uniform Commercial Code provides that an assignment of a contract in general terms is a delegation of performance of the duties of the assignor citing the equivalent of Virginia Code 8.2-210(4). In so noting, they said: "Our holding in this case maintains a desirable uniformity in the field of contract liability." *Ibid.*

As noted above, the *Vulcan* opinion, *supra*, cites Professor Grismore as an authority in this field. Reminc's brief in the Fourth Circuit also relied on him. Professor Grismore also has said:

> "Moreover common sense tells us that the assignor, after making such an assignment, usually regards himself as no longer a party to the contract. He does not and, from the nature of things, cannot easily keep in touch with what is being done in order properly to protect his interests if he alone is to be liable for non-performance. Not infrequently the assignor makes an assignment because he is unable to perform further or because he intends to disable himself for further performance."

Grismore, *Is the Assignee of a Contract Liable for the Non-Performance of Delegated Duties?* 20 Mich. L. Rev. 284, 289 (1920).

Those common sense arguments are applicable here. Older case law also supports United States Elevator's position. See, e.g., *Wightman* v. *Spofford*, 8 N.W. 680 (Io. 1881), *Corvallis* v. *Portland*, 163 p. 1173 (Or. 1917) and *Blue Star Nav. Co.* v. *Emmon Coal Mining Corp.*, 120 A. 459 (Pa. 1923).

Section 328 of the Restatement of Contracts (2d) totally dispels any notion that United States Elevator has to prove the intentions of Citcon and Reminc when they entered into their post-filing assignment. It also supports the position of United States Elevator that there was a delegation of unperformed duties to Reminc:

> "(1) Unless the language or the circumstances indicate the contrary, as in an assignment for security, an assignment of 'the contract' or of 'all my rights under the contract' or *an assignment in similar general terms* is an assignment of the assignor's rights and a *delegation of his unperformed duties* under the contract.
>
> (2) Unless the language or the circumstances indicate the contrary, the acceptance by an assignee of

> such an assignment operates as a promise to the assignor to perform the assignor's unperformed duties, and the obligor of the assigned rights is an *intended beneficiary* of the promise." *3 Restatement of the Law Second,* Contracts 2d § 328 (A.L.I. 1981) (Emphasis supplied.)

The Restatement and the case law support the findings of the Courts below and correctly imposed liability on Reminc. Petitioner has cited no cases with similar facts to the contrary.

IV.

UNITED STATES ELEVATOR CORPORATION WAS ENTITLED TO PROCEED AS AN UNSECURED CREDITOR.

Reminc relies on *United States* v. *Marxen,* 307 U.S. 200 (1939) on this issue. Simply stated, *Marxen* said the Government was not entitled to proceed as a priority claimant (as its original proof of claim was styled) but was entitled to participate as a general unsecured creditor. United States Elevator Corporation is seeking the same type of result.

In a similar situation, the Fourth Circuit recently upheld the same principle. In *Lawler, Trustee* v. *County of Henrico,* 636 F. 2d 68 (4th Cir. 1980), the County filed a proof of claim as a priority, tax creditor. The Bankruptcy Court disallowed it as a priority claim but allowed it in full as general and unsecured. In affirming that decision, it was noted: "Since even an ordinary lien creditor, deprived of realizing on his security, may pursue his debt by filing as a general creditor, we can discern no unique inequity or unfairness to other general estate creditors by permitting the County's claim to be filed as such." 636 F. 2d at 70.

The plan of arrangement provided a 100% payout to all creditors whose claims were allowed. Reminc has used the Court's services for over seven years to rehabilitate itself. That rehabilitation is not solely debtor oriented. The purpose of the Act is also to see that the creditors are paid.

Amendments to claims are liberally allowed. As *3 Collier on Bankruptcy* (14th Edition) §57.11(3) points out: "It is well settled that if there is upon the record in the bankruptcy proceeding, within the six months prescribed by §57(n), *anything* sufficient to show the existence, nature and amount of a claim, it may be amended even after the expiration of the period." (Emphasis supplied.) Footnote twenty-five to that Section points out:

> "In other words, there must be in the record the substance of that which is asked for. The right to amend can go no further than to bring forward and make effective that which in *some shape* was asserted in the original claim." (Emphasis supplied; citations omitted.)

Other hearings before both District and Bankruptcy Courts dealt with the issue of the validity of Elevator's waiver of mechanic's lien upon which the debtor ultimately prevailed. While United States Elevator could not establish legal fraud, the facts certainly supported a conclusion that it was duped into executing and delivering to Citcon Corporation (the general contractor-assignor), a waiver of its right to mechanic's lien. Simply put, United States Elevator Corporation simply deleted the word "priority" from its proof of claim and made it an unsecured claim.[6]

Petitioner complains that the change in the classification of U.S Elevator's claim was after the fact of filing. Although the petition was filed in August of 1975 and the plan was confirmed in May of 1976, the debtor says it is allowed to proceed on an assignment dated August 6, 1976, which did not even exist when either of those two events occurred. United States Elevator Corporation never changed the nature of its claim against the debtor; the only thing it did was change its priority mechanic's lien status to that of a general unsecured creditor. This case has always been an elevator contract case.

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[6] Mechanics lien and contractual remedies are cumulative in Virginia. (See Trial Court's opinion, App. 13a.)

In an "Objection to Claim" filed in late January of 1976, the debtor claimed in paragraph three that "according to your debtor's books and records of account the balance owed to this subcontractor under its original contract is $109,938.00." In paragraph five of the same document Reminc said:

> "That, if all work required under [U.S. Elevator's] original contract is completed in accordance with the terms and specifications of that contract, then your debtor has *no objection* to the above named contractor being paid the amount owed under its original contract." (Emphasis supplied; J.A. 86.)

The objection did *not* say it would pay if U.S. Elevator had not waived its mechanic's lien rights. It did *not* say Elevator could recover only if it could establish the proposed efficacy of the assignment. It *did* say if the work was completed, Petitioner would pay. United States Elevator has satisfied that burden in three courts below.

The record is silent as to whether Citcon, the general contractor, also executed a waiver of its lien rights. If not, it could have protected all subcontractors. It *is* clear that its original proof of claim was for $1,199,292.03 (See J.A. 139-140) and that it was bought out by the debtor for about $15,000.00. The assignment and the "buy out" of the general contractor were both post filing occurrences. These events are said to have no impact on United States Elevator's claim except in a negative way. The debtor asserts that it can do what it wants post filing and take only the benefits from those actions. Its position is contrary to equity and common sense.

CONCLUSION

There are no "special and important reasons" for this Court to grant certiorari under Rule 17. There is no conflict between the Circuit Courts or other State Courts of last resort. There is no important federal question to be resolved. Petitioner has had the benefit of two, studied appellate reviews. That is enough.

This Court is respectfully requested to deny the Petition for a Writ of Certiorari and award U.S. Elevator its costs.

Respectfully submitted,

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